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No. 10

In the Supreme Court of the United States

OCTOBER TERM, 1938

THE UNITED STATES OF AMERICA, PETITIONER

v.

ONE 1936 MODEL FORD V-8 DE LUXE COACH, MOTOR NO. 18-3305511, COMMERCIAL CREDIT COMPANY, CLAIMANT

ON WRIT OF CERTIORARI TO THE CIRCUIT COURT OF APPEALS FOR THE FOURTH CIRCUIT

SUPPLEMENTAL BRIEF FOR THE UNITED STATES ON REARGUMENT

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This case is before the Court on the Government's petition for a reargument granted by the Court after argument of the case and a decision by this Court affirming the judgment of the court below by an equally divided Court.

The Government's petition for writ of certiorari to the Circuit Court of Appeals for the Fourth Circuit was granted April 4, 1938 (303 U. S. 633). After argument of the case this Court, on October 17, 1938, by a *per curiam* decision, affirmed the judgment of the Circuit Court of Appeals by an

equally divided Court (305 U. S. IV). Thereafter, the Government filed a petition with this Court for a rehearing before a full bench. On November 7, 1938, the petition was granted, the judgment of affirmance theretofore entered was vacated, and the case was restored to the docket for reargument (303 U. S. XXVII).

QUESTION PRESENTED

Whether the claimant sufficiently complied with the provisions of Section 204 (b), Title II, of the Liquor Law Repeal and Enforcement Act of August 27, 1935, c. 740, 49 Stat. 872, 878 (U. S. C., Supp. IV, Title 27, Sec. 40a), to entitle it to a remission of the forfeiture of an automobile seized and forfeited under the internal revenue laws.

STATUTE INVOLVED

The statute involved is set forth in the Government's brief on the original argument, pp. 2–3.

ARGUMENT

The general question in this case is the extent of the investigation which automobile finance companies purchasing conditional sales contracts are required to make under Section 204 (b), Title II, of the Liquor Law Repeal and Enforcement Act, where straw purchaser transactions are involved, as a condition precedent to allowance of claims for the remission of forfeitures. The statute sets forth three conditions which must be complied with

by the claimant before the court acquires jurisdiction to remit a forfeiture. The court below held that conditions (1) and (2) had been complied with in this case because the claimant had acquired its interest in the vehicle in good faith and had neither knowledge nor reason to believe that the vehicle would be illegally used, since there was nothing before the claimant to show that Landrum Walker, whose paper it had before it, was not the real purchaser. As to condition (3), the court held that this condition had been complied with when the claimant investigated Landrum Walker, the fictitious or straw purchaser, because the statute did not require a lienor to ascertain at his peril the identity of every person having an interest in the property and to make inquiry of the designated law enforcement officers as to every such person's previous record or reputation, unless from the documents themselves or other surrounding circumstances the lienor possessed information which would lead a reasonably prudent and law-abiding person to make a further investigation. The court also held that the case did not present any facts which would have justified the District Court, in the exercise of discretion, in refusing a remission of the forfeiture (R. 27–28).

In its brief on the original argument the Government conceded that condition (1) was complied with because the claimant had an interest in the vehicle and because it acquired its interest in [illegible]od faith, in that it was not a party to the transaction

between the dealer's agent and the bootlegger. It also admitted, *arguendo,* with respect to condition (2) that the claimant had no "knowledge" that the vehicle would be illegally used,[1] but with further respect to condition (2) it contended that the claimant should not be heard to say that it had no "reason to believe" that the vehicle would be so used when it made no effort to ascertain what the true facts and circumstances surrounding the transaction were and whether Landrum Walker was the real purchaser or whether some one else with a bootleg reputation was interested in the transaction. This information, it was pointed out, the claimant could doubtless have obtained by inquiry of Landrum Walker, whose paper it had before it, or of the vendor, with whom it dealt and from whom it obtained the conditional sales contract. As to condition (3) the Government contended that under the language of the statute the claimant was required to investigate the real purchaser at its peril and that, since it failed to do so, the claimant, as between it and the Government, assumed the risk of fraud perpetrated upon it by the dealer and the bootlegger. It was further urged with respect to condition (3) that in any event, before the claimant was permitted to assert

[1] This *arguendo* concession was based upon the premise that the claimant did not have actual knowledge that the car would be illegally used. That there is a basis for an argument that it had implied knowledge, see discussion at pp. 10–13, *infra.*

compliance with the statute, it should at least have been required to show that it made a reasonable effort to ascertain the identity of the real purchaser by inquiring of the fictitious purchaser and the dealer, both of whom were known to it, so that the real purchaser could be investigated as contemplated by the statute. Lastly, it was urged that since the conditions prescribed by the statute had not been complied with by the claimant there was no room for the exercise of discretion by the District Court in remitting the forfeiture. The decision of the Circuit Court of Appeals for the Eighth Circuit in *Federal Motor Finance* v. *United States,* 88 F. (2d) 90, was especially relied upon in support of the Government's contentions.

After argument of the case before this Court the Circuit Court of Appeals for the Fifth Circuit handed down its decision in *United States* v. *Automobile Financing, Inc.*; 99 F. (2d) 498, in which the facts were similar to those in the instant case. One McFarland, a bootlegger, purchased a car from an automobile salesman. The note and conditional sales contract were executed by one Jenkins, who had a good reputation, and were assigned to the finance company, who had no knowledge of the fraud. The car was seized while being used by McFarland in violating the internal revenue laws and its forfeiture followed in the United States District Court for the Northern District of Georgia. The finance company applied to the court for a remission of the forfeiture under the

Liquor Law Repeal and Enforcement Act and its petition was granted (22 F. Supp. 507). On appeal to the Circuit Court of Appeals for the Fifth Circuit the Government contended that in cases of this kind, where the real purchaser with a record procures another to appear as purchaser, the ostensible purchaser must be disregarded; that where, as in the case before the court, no inquiry was made regarding the real purchaser, the statutory conditions precedent were not met; and that the spirit and purpose of the statute, as well as its literal terms, required that the remission be denied. In affirming the judgment of the District Court the court conceded, as did the Circuit Court of Appeals for the Fourth Circuit in the instant case, that condition (3) of the statute was capable of the construction contended for by the Government, citing the *Federal Motor Finance* case, *supra,* but agreed with the view of the Circuit Court of Appeals in the instant case that " 'Congress did not intend to impose upon the lienor the obligation to ascertain at his peril' the existence of secret or covered [sic] interests, 'unless, from the documents themselves, or other surrounding circumstances, the lienor possesses information which would lead a reasonably prudent and law-abiding person to make further investigation.' " The court further held that "in the absence of circumstances putting them upon notice, persons dealing with automobile paper in due course and in good faith, may deal with it upon the faith of the ownership being as it

appears upon the papers to be; and that, if they have made the prescribed inquiry as to the owners so appearing, the Court, in the exercise of a sound discretion, may remit the forfeiture as to them." (R. 48–49, No. 627, present term; 99 F. (2d) 498, 500.)

On March 13, 1939, this Court granted the Government's petition for writ of certiorari in that case (No. 627, present term) and assigned the case for argument immediately following the reargument in the instant case.

We thus have two Circuit Courts of Appeals (Fourth and Fifth Circuits) recognizing that the third condition of the statute is open to the construction contended for by the Government that a claimant is charged with a duty of making inquiry as to any one bearing a liquor record or reputation and having a right under the contract of sale, and that this view is supported by the decision of the Circuit Court of Appeals for the Eighth Circuit in the *Federal Motor Finance* case, but nevertheless holding, in effect, that the statute does not mean what it says and that Congress did not intend to impose upon a claimant the duty of investigating the real purchaser unless from the documents themselves or other surrounding circumstances the claimant is put on notice that some one else is interested in the transaction.

To permit a finance company, in a case such as this, to adopt a course of procedure which allows

it to rely solely upon the papers before it and what they reveal is, we submit, to sanction a construction of the statute which fails to meet either the second or the third condition thereof.

Such an interpretation has the effect of protecting the interests of automobile finance companies at the expense and sacrifice of protection of the interests of the Government in its revenue. While it was the purpose of the statute to relieve innocent lienors against a harsh condemnation of their interests in property, it was not intended to enlarge the opportunities to defraud the revenue. Except for the statute in question lienors would have no standing in court. Judge Paul of the United States District Court for the Western District of Virginia in his opinion in *United States* v. *One Ford Coupe*, 20 F. Supp. 44, 48, referred to the increasing number of bootleggers and dealers using straw purchasers and transferring titles to finance companies for the purpose of defrauding the revenue laws. District Judge Underwood in his opinion in the *Automobile Financing, Inc.*, case, *supra*, said (R. 26–27, No. 627; 22 F. Supp. 507, 509–510):

> It appears, therefore, that it [the claimant finance company] acted in good faith, but the law requires something more than the exercise of good faith and requires that finance companies take reasonable precautions against fictitious sales where the same can be checked by the exercise of reasonable

> care. The practice of making fictitious sales for the benefit of bootleggers and transferring the title papers to an innocent finance company has grown to such an extent as to embarrass the enforcement of the revenue laws, and, while care should be exercised to relieve innocent owners against harsh condemnation of their property, nevertheless the power to do so should not be so loosely exercised as to give encouragement to violators of internal revenue laws. The immunization of an automobile against forfeiture by such schemes would be simply forcing the court to play its prearranged and expected role in ordering a release. "In a case like this the interest of citizens must be subordinated to the exigencies of government, as for many years heretofore." *United States* v. *1935 Ford Coupe,* D. C., 17 F. Supp. 331, 333.

Section 204 of the statute was manifestly designed not only to protect the interests of those whose property has been forfeited under the internal revenue laws through no fault of their own, but also to protect the interests of the Government in its revenue. While Section 204 (a) gives the District Courts exclusive jurisdiction to remit or mitigate forfeitures, Section 204 (b) provides specifically that the court "shall not allow the claim of any claimant for remission or mitigation *unless and until*" [Italics ours] he proves the existence of two conditions in all cases, and in certain cases, such as that at bar, the existence of an additional condition (see Government's brief on original argu-

ment, pp. 2–3). In the Government's principal brief it was pointed out that persons dealing in automobiles and in automobile finance paper obviously do so with full knowledge that automobiles are particularly adapted to and are frequently used in violating the internal revenue laws and that they also know that their greatest risk is the danger of the seizure of the vehicles for violating such laws.[2] Certainly the claimant here, a company long engaged in the business of financing the purchase of automobiles, cannot claim that it was not aware of this hazard, particularly since the reports show that on at least three different occasions before the enactment of the present statute it had appeared in court for the purpose of seeking to salvage its interests in automobiles which had been used in violating the liquor laws.[3] Since the claimant ob-

[2] The figures given below, which have been furnished by the Statistical Section of the Alcohol Tax Unit, Treasury Department, show the number of automobiles and trucks seized by that Unit in connection with liquor violation cases during the period since July 1, 1935. Detailed data by States and by months were published in the Annual Reports of the Commissioner of Internal Revenue for the fiscal years 1936 to 1938, inclusive.

Fiscal year ended June 30	Automobiles	Trucks	Total
1936	4,641	470	5,111
1937	3,973	490	4,463
1938	3,730	495	4,225
First 8 months of 1939	2,690	308	2,998
Total	15,034	1,763	16,797

[3] See *Commercial Credit Co.* v. *United States*, 5 F. (2d) 1 (C. C. A. 6th) (1925); *United States* v. *Commercial Credit*

viously had knowledge of the bootleg hazard involved in the business in which it was engaged, it might well be argued that under the decisions relating to implied notice it can not be heard to say that it did not have "knowledge" that the vehicle in question would be used in violating the liquor laws, within the meaning of condition (2) of the statute. However, it is not necessary to go so far, since these decisions at least support the view contended for by the Government in its principal brief that the claimant is estopped, under the circumstances, to say that it did not have "reason to believe," within the meaning of the second condition, that the automobile would be illegally used.

A succinct statement of the doctrine of implied notice is found in the decision of this Court in *Wood* v. *Carpenter,* 101 U. S. 135, 141, in which this Court quoted the following from *Kennedy* v. *Greene,* 3 Myl. & K. 722:

> Whatever is notice enough to excite attention and put the party on his guard and call for inquiry, is notice of everything to which such inquiry might have led. When a person has sufficient information to lead him to a fact, he shall be deemed conversant of it.

In *Daniel* v. *Tolon,* 53 Okla. 666, 684, it was said that, "In such cases means of knowledge, with a duty of using them, are deemed equivalent to knowledge itself, and passive good faith will not serve to excuse wilful ignorance."

Co., 20 F. (2d) 519 (C. C. A. 4th) (1927); *Commercial Credit Co.* v. *United States*, 276 U. S. 226 (1928).

And in *Scheckells* v. *Ice Plant Mining Co.*, 180 S. W. (Mo.) 12, it was said (p. 15):

> The law fastens liability on the element of knowledge whether it be actual or constructive; and to be aware of certain facts and circumstances which would lead ordinarily careful and vigilant persons to know about a certain condition is, in the eyes of the law, knowledge of that condition. In other words, in the face of certain facts and circumstances a person will not be heard to say, "I did not know."

Statements from other decisions and authorities with reference to the doctrine of implied knowledge will be found in *Charles* v. *Roxana Petroleum Corp.*, 282 Fed. 983, 989–991 (C. C. A. 8th), certiorari denied, 261 U. S. 614; see also *Electric Belt Line* v. *Ide & Son*, 15 Tex. Civ. App. 273; *Gamble* v. *Black Warrior Coal Co.*, 172 Ala. 669; *Street* v. *Treadwell*, 203 Ala. 68; Bouvier's Law Dictionary (Rawle's 3d Revision), Vol. 3, p. 2368.

We submit therefore that the decision of the court below in the instant case, that the claimant had no reason to believe, within the meaning of condition (2), that the vehicle would be illegally used because it did not know that Landrum Walker, the fictitious purchaser, was not the real purchaser, was erroneous. The reason the claimant did not know is that it made no effort to ascertain the true facts. Despite the knowledge imputable to it of the bootleg hazard involved in the business in which it was engaged, it chose to

rely solely upon the documents before it and what they disclosed. It consequently preferred to remain in its favored state of ignorance by refraining from seeking knowledge. It had the means of knowledge, in that it could have inquired of the dealer or the fictitious purchaser, but it conveniently closed its eyes to information within its reach. Its "passive good faith will not serve to exclude wilful ignorance." *Daniel* v. *Tolon, supra.*

The court likewise erred, we submit, in its construction of condition (3) of the statute. The court held that under it Congress did not intend to impose upon a claimant the duty of investigating every person having an interest in the property unless from the documents themselves or other surrounding circumstances the claimant possesses information which would lead a reasonably prudent and law-abiding person to make a further investigation. The statute specifically provides, however, that where the claimant's interest arises out of or is in any way subject to any contract or agreement under which a person having a record or reputation for violating the liquor laws has a right to the property, then the claimant shall make certain investigations of such person. There is nothing in the statute limiting the investigation to persons named in the documents. It is apparent that Congress did not intend by its language in condition (3) that claimants, including automobile finance companies, should be permitted to ignore the possibilities of latent interests in property and

accept at face value the names and signatures appearing on paper purchased by them, being assured they would be saved from loss under the forfeiture statutes if the property covered by such paper was used in violating the internal revenue liquor laws. Not only did the statute impose a specific duty on the claimant to make certain investigations in this case, but the claimant's general knowledge of the bootleg hazards involved in such transactions put it on notice, aside from anything appearing in the documents which it might have before it. It was not only engaged in financing the purchase of property (automobiles) with respect to which this Court in *Goldsmith-Grant Co.* v. *United States*, 254 U. S. 505, said (p. 513) it would "have to ascribe facility * * * as an aid to the violation of the law," but it was fully aware of the fact that automobiles are frequently so used, of the laws governing their condemnation for such use, and of its duty if it hoped to obtain a remission or mitigation of the condemnation, to so conduct its business as to prevent the loss of its property. The claimant may therefore not be heard to say that it was not put on notice sufficiently to cause it to inquire diligently into the so-called straw purchaser transaction here involved with a view to discovering a possible secret or latent interest of a person having a record or reputation for violating the liquor laws. We submit that if under the specific terms of condition (3) the claimant was not required to investigate the real purchaser at its peril, it was at least

required to show, before it could assert compliance with the statute, that it made a reasonable effort to ascertain, as by inquiring of the dealer or the fictitious purchaser, who the real purchaser and user of the car was so that he could be investigated as contemplated by the statute.

Of course, a claimant has the choice of making the investigation prescribed by the statute or of relying upon his own judgment, but if he relies upon his own judgment and does not make the investigation, he takes the risk, we submit, of having his application for a remission of the forfeiture denied where it develops that a person having a record or reputation for violating the liquor laws is the real purchaser of the vehicle.

CONCLUSION

For the reasons stated in this and in the Government's principal brief, the judgment of the court below should be reversed.

Respectfully submitted.

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